IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 5963 of 2003 & 17969 of 2003

1) WRIT PETITION NO : 5963 of 2003

Between:

P.Ravi Sankar, s/o. Dr. P.Babu Rao, Assistant Vigilance
and Security Officer, Tirumala Tirupathi Devasthanam,

Tirumala, Chittor district … Petitioner

AND

1)State of Andhra Pradesh, rep. by its Principal Secretary
to Government, Revenue (Endowments) Department,
Secretariat buildings, Hyderabad.

2)The Principal Secretary to Government of Andhra Pradesh,
Home Department, Secretariat buildings, Hyderabad.

3)The Director General and Inspector General of Police,
Andhra Pradesh, Hyderabad.

4) The Tirumala Tirupathi Devasthanam, rep. by its
Executive Officer, Tirupathi, Chittor district.

5)The Chief Vigilance and Security Officer, Tirumala Tirupathi
Devasthanam, Tirupathi, Chittor district. ,,, Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of a Writ of Mandamus a)declaring the action of the fourth respondent in relieving the petitioner from the post of Assistant Vigilance and Security Officer, Tirumala Tirupathi Devasthanams vide RoC No. B6/12045/2003, dated 01.04.2003 as arbitrary, illegal and violative of the Articles 14 and 16 of the Constitution of India; b)Consequently

direct the respondents to retain the petitioner as Assistant Vigilance and Security Officer in Tirumala Tirupathi Devasthanams pending final orders by the State Government in accordance with the directions of the Hon'ble High Court in W.P. No.5757 of 2001 dated 24.10.2002.

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents 1 to 3: GP FOR HOME

Counsel for the Respondents 4 & 5 : Mr. A.K.Jayaprakash Rao

2) WRIT PETITION NO : 17969 of 2003

Between:

Tirumala Tirupati Devasthanams, Tirupati, Chittoor District
rep. by its Executive Officer Ajeya Kallam, I.A.S,
S/o.Ranga Reddy, R/o.Tirupati.

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep. by its Principal Secretary Revenue (Endowments-III) Department, AP Secretariat, Hyderabad
2 The Principal Secretary, Government of Andhra Pradesh, Home Department, AP Secretariat, Hyderabad.
3 The Director General and Inspector General of Police, Andhra Pradesh, Saifabad, Hyderabad-4
4 P.Ravi Shankar, S/o.Dr.P.Babu Rao, Former Vigilance & Security Officer, Door No.9/3/90, Porla Street, Tirupati, Chittoor District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 1st respondent and issue an appropriate writ, order or direction, particularly one in the nature of Writ of Mandamus, declaring that the action of 1st respondent in issuing G.O.Ms.No.523 Rev.(Endts-III) Dept. dated 22-4-2003 and Memo No.72194/Endts-III/A2/2002, dated 22-4-2003 and further Memo No.72194/Endts-III/A2/2000-5, dated 4.7.2003, absorbing the 4th respondent for appointment on transfer in Tirumala Tirupati Devasthanams and insisting to implement the Government Order and not considering the proposal of the petitioner Devasthanams to delete the provision of 'appointment by transfer' to the posts of Vigilance and Security Wing and Wireless Wing of the Petitioner Devasthanams as illegal, unjust, contrary to law and amounts to abridging powers of petitioner Devasthanams in maintaining clean administration, and grant all consequential benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondents 1 to 3: G.P. for Home

Counsel for the Respondent NO.4 : MR.NUTY RAM MOHAN RAO

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 5963 of 2003 & 17969 of 2003

COMMON ORDER:

Heard Sri Nuty Rama Mohana Rao, learned counsel appearing on behalf of the petitioner in Writ Petition No. 5963 of 2003 and Sri A.K.Jayaprakash Rao, learned counsel appearing on behalf of the Tirumala Tirupathi Devasthanams.

Since both the cases are connected with each other in respect of services of one individual, the same are being taken up together for disposal.

In Writ Petition No. 5963 of 2003, the petitioner who has been working as Assistant Vigilance and Security Officer with the Tirumala Tirupathi Devasthanams (for short, 'T.T.D.') sought a Writ of Mandamus to declare action of the T.T.D. in relieving him from the post of Assistant Vigilance and Security Officer as per the order dated 01.04.2003 as illegal and for further direction to continue him in the said post till the final orders are passed by the State Government in terms of the directions given by this Court earlier in Writ Petition No. 5757 of 2001 dated 24.10.2002.

In the other Writ Petition No. 17969 of 2003 filed by the T.T.D.,

challenge is made seeking a Writ of Mandamus to declare the subsequent proceedings issued by the State Government vide G.O. Ms. No.523 Rev. (Endts-III) Dept., dated 22.04.2003 and memos dated 22.04.2003 and 04.07.2003 as illegal.

The facts, in brief required for disposal of these cases, are that the petitioner in Writ Petition No. 5963 of 2003 was initially appointed as Reserve Sub Inspector in Police Department of the State Government and had been working as such since 10.09.1984. Later on, the petitioner's request to send him on deputation to the T.T.D. was acceded to and he has been working in the post of Assistant Vigilance and Security Officer with the T.T.D. from 01.05.1995. It is stated that the petitioner has got good record of service apart from the fact that before entry into service, he had already undergone various special training required for V.V.I.P.'s security, Vigilance, Commando course, explosive course, etc. and received award of Andhra Pradesh Police Uttama Seva Pathakam in the year 1991 by the State Government. It is stated that as per the Foreign Service terms and conditions, the maximum period of five years on deputation was coming to an end by 30.04.2000. However, the Governing rules with the T.T.D. in respect of the posts held by him as Assistant Vigilance and Security Officer are covered under G.O. Ms. No. 1060 Revenue (Endowments-I) Department, dated 24.10.1989, which contemplate appointment of such posts by way of direct recruitment or on deputation. As per the Resolution NO.437, dated 30/31.07.1998 of the T.T.D. Board, a further source of appointment was proposed by transfer and accordingly, suitable amendment was issued in G.O. Ms. No.422 Revenue (Endowments-III) Department dated 27.05.1999 amending G.O. No.1060 dated 24.10.1989. Since the petitioner fulfils all the required qualifications, he submitted a representation on 04.07.1999 with the Executive Officer of the T.T.D. to consider his case for appointment by transfer in accordance with the amended Rules and sought for extension of the services with the T.T.D. Thereupon, a no objection certificate was issued by the

Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and the Executive Officer approved the same and gave concurrence for such transfer. In fact, the petitioner submits that he was directed to forego his seniority on being appointed by transfer with the T.T.D. The Additional Director General of Police, Andhra Pradesh Special Police also gave consent and expressed that he has no objection to spare the services of the petitioner. Therefore, all the agencies concerned have virtually approved the proposals for transfer of the petitioner under the amended provision. It is also pointed out that in similar circumstances, similar such request of one B. Narasimhulu Reddy, Inspector (Communications) was acceded to and the Government issued fresh orders permitting him to be appointed by transfer. However, the present Executive Officer suddenly sent intimation to the Government recalling their earlier communication and withdrawing proposal for such appointment by transfer in respect of the petitioner. Thereupon, the Chief Vigilance and Security Officer issued a memo dated 05.03.2001 asking to relieve the petitioner and similar other persons by 31.03.2001. The complaint of the petitioner is that having regard to the entire chequered acceptance at all levels earlier on the proposals made by the then Executive Officer itself, the present Executive Officer can not unilaterally withdraw such proposals on his own and therefore, the entire such action is wholly illegal.

It is further pointed out that on the earlier occasion, the petitioner filed a Writ Petition No. 5757 of 2001 challenging the action of the respondents in trying to repatriate him to his parent department as illegal. Initially, interim directions were given on 30.03.2001 and ultimately it was disposed of on 24.10.2002 with a direction to the respondents to consider the petitioner's representation, which was pending, and pass appropriate orders. Thereafter, the petitioner filed a detailed representation on 27.11.2002 addressed to the Chief Secretary to the State Government to consider his case, in pursuance of which there has been departmental correspondence between Home and Endowments Departments and the matter is still

pending consideration. In spite of the same, the impugned action on the part of the respondents herein in trying to relieve the petitioner from the said post with the T.T.D. is wholly illegal and in the teeth of directions given by this Court earlier. Hence, this Writ Petition.

In the counter affidavit filed by the Executive Officer on behalf of the T.T.D., it is stated that the petitioner was admittedly working on deputation with the T.T.D.. No doubt, it was stated that a provision was sought to be made for making appointments by transfer. However, it was done without realising the repercussions and it was felt that such permanent appointments are creating vested interest for the obvious reasons and object of vigilance is not being served. Therefore, proposals were sent to the Government on 27.06.2001 for deletion of the said provision from the T.T.D. Recruitment Rules and the same is still pending. Even in regard to B.Narasimhulu Reddy, it was stated that though the G.O. was issued by the Government, however, proposals have been sent once again from the T.T.D. to delete such transfer and the same are awaited.

It is also pointed out that T.T.D. never called for any applications for filling up the posts by recruitment by transfer and therefore, the petitioner can not make any claim nor has he any enforceable right as such. Mere existence of such provision would not confer any entitlement to the petitioner for automatic appointment. It was pointed out that the T.T.D. did not take any decision as such to fill up the post of Assistant Vigilance and Security Officer by recruitment by transfer basis. It was further pointed that the petitioner was, in fact, relieved on 03.04.2003 itself. Further, it was pointed out that the Apex Court in Civil Appeal No. 184 of 1988, dated 17.08.1994, confirming the Judgment of a Division Bench of this Court, held that deputationists have no right to claim any absorption. Therefore, the petitioner can not make any claim and there are no merits in the Writ Petition and the same is liable to be dismissed.

In Writ Petition No. 17969 of 2003, the petitioner-T.T.D. seeks to assail by way of Writ of Mandamus, the impugned orders issued in G.O Ms. No.523, dated 22.04.2003 and Memos dated 22.04.2003 and 04.07.2003 absorbing the fourth respondent, who is petitioner in the first Writ Petition, for appointment by transfer as bad and illegal.

The case of the petitioner herein virtually is a continuation of the events as pointed out on behalf of the petitioner in the first Writ Petition No. 5963 of 2003, which led to issuance of impugned proceedings, which, virtually, in effect, concerns the other petitioners and against amendment in respect of the policy decision taken by T.T.D. to delete the appointments by way of transfer. It is only in continuation of the directions given by this Court in Writ Petition No.5757 of 2001 and the proposals sent at a later stage once again by the T.T.D. to amend its own rules and seeking to delete the appointments by transfer, it was pointed out that such policy introduced earlier by way of amendment was having its own problems and it would not be in the interest of the institution and further, it is leading for permanent establishment of vested interest and diluting the very object of the vigilance. The case of the petitioner is that under the impugned G.O. No. 523, dated 22.04.2003, the State Government, acting in pursuance of the directions given in W.P. No. 5757 of 2003, directed that his services be absorbed permanently in terms of the existing provisions in the T.T.D. service Rules vide G.O. No. 422, dated 27.05.1999. Consequently, the impugned memos have been issued on 22.04.2003 cancelling orders of repatriation by the T.T.D. in respect of the other petitioner and also holding that there is no need to withdraw the orders issued in G.O. No. 523 dated 22.04.2003 and memo of the same date.

The case of the petitioner is that under the impugned G.O. and the memos, the State Government did not consider the petitioner’s case

from a proper perspective and especially the Vigilance wing and creation of vested interest in such personnel who are sought to be made permanent by way of transfer. It is also main grievance of the petitioner that even though comprehensive representations have been filed by the petitioner, including one on 27.06.2001, seeking for amendment of T.T.D. Service Rules and for deletion of appointments by transfer pointing out various reasons and exigencies, but the same remained unconsidered. Hence, the Writ Petition.

Sri Nuty Rama Mohana Rao, learned counsel appearing for the petitioner in Writ Petition No. 5963 of 2003 submits that no doubt the petitioner was on deputation with the T.T.D., but having regard to the amendment brought in for inclusion of appointment by transfer and consequently all the favourable steps having been taken with the approval of the concerned agencies, it is not open for the T.T.D. to fall back and even to go to an extent of seeking amendment to the Rules.

Sri A.K.Jayaprakash Rao, learned standing counsel appearing on behalf of the T.T.D. submits that either way the petitioner in Writ Petition No. 5963 of 2003 can not claim any enforceable right to seek either continuation of his services with the T.T.D. or even for making appointment by transfer. The T.T.D. did not call for any application even as per the amended Rules nor there is any decision as such to effect appointments by transfer. Further, having regard to the steps taken for amending the Rules for deletion of such provision, the petitioner is not entitled to any indulgence from this Court.

Having considered the submissions made and on perusal of the material, the question which crops up for consideration in these two Writ Petitions is as to whether on the facts and circumstances, the petitioner in Writ Petition No. 5963 of 2003 is entitled to seek appointment by way of transfer as per the existing rules, and whether

the impugned orders in the other Writ Petition rejecting the proposals of the T.T.D. are illegal ?

There is no dispute to the basic facts that the petitioner was initially appointed with the State Government in Police Department and it is only on deputation, he was deputed to the T.T.D. and at the end of completion of five years maximum as contemplated in the Service Rules, the T.T.D. sought to repatriate him to the parent department. However, at this stage, there have been certain events whereby at the instance of T.T.D. itself, the management brought amendments to its own rules for inclusion of appointments by transfer apart from the other sources of recruitment viz. direct recruitment and on deputation. However, subsequently, realising that by making such appointments by transfer, vested interests are being created and thereby rendering the Vigilance aspect of the Institution, which will not be in the interest of the institution, the present Executive Officer sent proposals for amendments deleting the provision of appointments by transfer. These matters were admittedly pending, at which time the petitioner in Writ Petition No. 5963 of 2003 was sought to be relieved and therefore, he filed the first Writ Petition and this Court granted interim orders of *status quo* on 08.04.2003. Subsequently, proposals of the T.T.D. were rejected under G.O. Ms. No. 523 dated 22.04.2003 and the repatriation proceedings by another memo and the petitioner was directed to be appointed with the T.T.D..

In the Writ Petition No. 5963 of 2003, the complaint is that the matter was pending in pursuance of the direction given by this Court in Writ Petition No. 5757 of 2001 dated 24.10.2002 and even before any decision was taken thereon, the T.T.D. was trying to relieve him and therefore, it necessitated him to file this Writ Petition.

In the other Writ Petition No. 17969 of 2003 filed by the T.T.D., the

complaint is that though several aspects have been pointed out as to the practicalities of the award, especially creation of vested interest and filing of detailed representations by the T.T.D., including the one on 27.06.2001, the same is not being considered from a proper perspective. The entire approach of the State Government in regard to the impugned action in Writ Petition No. 17969 of 2003 is only based upon the fact that having regard to the proposal made by the T.T.D. itself in respect of the other petitioner, a new relationship of employer-employee exists between the T.T.D. and the applicant and therefore, he can be continued as employee of T.T.D. only. Further, having regard to the willingness expressed by the T.T.D., necessarily it contemplates for appointment by transfer as proposed by them earlier. However, on a reading of the G.O. and the memos issued subsequently both rejecting repatriation at the instance of T.T.D. and issuance of direction for such appointment, the main aspect as to whether there exists any right with the individual to seek for such appointment more so, he, being a deputationist. As already held in respect of the very same institution, a Division Bench of this Court has taken a view that deputationists do not have any such right and the same was confirmed by the Apex Court in Civil Appeal No. 184 of 1988, dated 17.08.1994. Further, it is also to be noticed that no person has any enforceable right to seek any appointment to any public post and the same can not be enforced in any manner. Even mere proposals as such would not create any right, more so, having regard to the subsequent events which are supported by valid reasons. Necessarily, it contemplates that the matter has to be looked into from an apt angle to see whether the policy decision for making appointment by transfer would be in the interest of institution basically and whether would it also create any such practical difficulties affecting the very larger interest of the institution especially its Vigilance wing. All these aspects have been totally given a go by in the impugned G.O. and the Memos in Writ Petition No. 17969 of 2003. It is needless to reiterate that in the various principles laid down by this Court and the Apex Court in regard to any such claim to be made by an individual. All such principles need no reiteration at this

stage. However, the fact remains that except acting upon the earlier proposals and the representation filed by the petitioner in the first Writ Petition, no other reason has been given to show as to why the T.T.D. can not fall back on its own decision with a valid reason when it actually has a policy decision affecting its own administration, vigilance, etc. In the circumstances, it is felt more desirable that having regard to the aforesaid circumstances, the matter required to be reconsidered afresh on merits and in accordance with law after taking into consideration the principles laid down by this Court and the Apex Court.

Accordingly, Writ Petition No. 17969 of 2003 is allowed setting aside the impugned G.O. Ms. No.523, dated 22.04.2003 and the memos dated 22.04.2003 and 04.07.2003. The first respondent-state government is directed to reconsider the entire matter afresh on merits in accordance with law after giving notice and opportunity to all the parties concerned. Having regard to the exigency and larger interest involved, the entire exercise shall be completed within a period of one month from the date of receipt of copy of this Order. No costs.

Having regard to the aforesaid directions given for reconsideration, Writ Petition No. 5963 of 2003 is, accordingly, disposed of and any claim made by the petitioner herein shall be subject to final decision to be taken by the Government. It is needless to mention that if the petitioner herein is not relieved, he shall be continued till disposal of the matter as directed above. No costs.

(B.Prakash Rao, J.)

28.03.2005

DRK

That Rule Nisi has been made absolute as above in Writ Petition No. 17969 of 2003.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Monday the twenty eighth day of March two thousand and five.

…. Registrar

Copy to:

1)The Principal Secretary, Revenue (Endowments-III) Department,
State of Andhra Pradesh, Secretariat buildings, Hyderabad.

2)The Principal Secretary to Government of Andhra Pradesh,
Home Department, Secretariat buildings, Hyderabad.

3)The Director General and Inspector General of Police,
Andhra Pradesh, Hyderabad.

4) The Executive Officer, Tirumala Tirupathi Devasthanam,
Tirupathi, Chittor district.

5)The Chief Vigilance and Security Officer, Tirumala Tirupathi
Devasthanam, Tirupathi, Chittor district.

6)Two CCs to the G.P. for Home, High Court of A.P., High Court buildings,
Hyderabad (o.u.t.).

7)Two CD copies.